

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**PETITION FOR LIMITED WAIVER OF  
47 C.F.R. § 51.917(c)**

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**EXECUTIVE SUMMARY**

TDS Telecom is seeking a limited waiver of the requirement set forth in the *USF/ICC Transformation Order* that its 2011 Rate-of-Return Carrier Base Period Revenue consist of, among other things, Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012.

Although the *USF/ICC Transformation Order* established a process for including in the Carrier Base Period Revenue amounts received after March 31, 2012, TDS Telecom cannot avail itself of that process for amounts owed to it by Halo Wireless, Inc., because, although Halo still owes TDS Telecom compensation for access services rendered in Fiscal Year 2011, the company has sought bankruptcy protection and plans to cease operation. As a consequence, TDS Telecom cannot as a matter of law satisfy the process set forth in the *USF/ICC Transformation Order* for including in the Carrier Base Period Revenue amounts received after March 31, 2012, because, although state regulatory commissions have determined that the service Halo received is subject to intrastate access charges, the automatic stay imposed in all bankruptcy proceedings effectively prevents those state regulatory commissions from ordering Halo to make payment. Moreover, even if these state commissions could order payment, Halo has confirmed that it lacks sufficient assets to make such payment through the orderly wind down of its operations in the Chapter 7 bankruptcy proceeding.

Absent the relief sought here, TDS Telecom is in an unfair and untenable position. If TDS Telecom is not able to include the amounts owed to it by Halo in Fiscal Year 2011 in its Carrier Base Period Revenue, its recovery mechanism funding will decline materially. This, in turn, will limit TDS Telecom's ability to deploy additional

network and improve its existing network so that more of its customers can receive broadband service and existing broadband customers can benefit from greater broadband speeds.

The Commission created a process in the *USF/ICC Transformation Order* that was intended to prevent such an outcome. Unfortunately, that process cannot work under the unique set of facts and circumstances that are present here. Although the *USF/ICC Transformation Order* established other processes through which carriers can challenge the funding they receive (*e.g.*, the Total Cost and Earnings Review or “USF Waiver” processes), those other processes were designed for very different circumstances; in any event, adhering to them would require TDS Telecom to meet inappropriate and burdensome requirements unrelated to the limited, surgical, and justifiable relief sought here.

The Commission is uniquely situated to permit TDS Telecom to include in its Carrier Base Period Revenue amounts owed to it by Halo in Fiscal Year 2011 by granting the relief requested. Doing so would have no effect whatsoever on the jurisdiction of the bankruptcy court, and would enable TDS Telecom to secure the funding it needs to help meet the Commission’s objective of achieving universal availability of voice and broadband service. In short, grant of this Petition for Limited Waiver is in the public interest.

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Service	)	
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Lifeline and Link-Up	)	WC Docket No. 03-109
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Universal Service Reform – Mobility	)	WT Docket No. 10-208
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**PETITION FOR LIMITED WAIVER OF  
47 C.F.R. § 51.917(c)**

TDS Telecommunications Corp. (TDS Telecom), on behalf of its subsidiaries (TDS Telecom's Subsidiaries)<sup>1</sup> and pursuant to Section 1.3 of the Commission's Rules,<sup>2</sup> hereby requests a limited waiver of the requirement that its 2011 Rate-of-Return Carrier Base Period Revenue consist of, among other things, Fiscal Year 2011 revenues from

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<sup>1</sup> See Attachment A (List of the TDS Telecom Subsidiaries That Have Billed Halo for Traffic).

<sup>2</sup> 47 C.F.R. §1.3

Transitional Intrastate Access Service received by March 31, 2012.<sup>3</sup> As explained more fully herein, this limited waiver is sought so as to permit TDS Telecom to include within its Base Period Revenues unpaid amounts billed to Halo Wireless, Inc. (Halo), for intrastate usage during Fiscal Year 2011 (FY2011), thereby rendering those amounts eligible for recovery pursuant to the Commission's eligible recovery mechanism.

The unique circumstances of Halo's refusal to pay TDS Telecom's Subsidiaries for intrastate usage during FY2011, together with Halo's recent decision to liquidate its assets and cease operation pursuant to Chapter 7 of the U.S. Bankruptcy Code, provide good cause for granting the relief TDS Telecom is seeking. TDS Telecom previously informed the Commission<sup>4</sup> of its concern that Halo's refusal to pay legitimate intrastate usage charges could hinder TDS Telecom's ability to recover those charges through the Commission's eligible recovery mechanism, which for FY2011, pursuant to the Commission's rules, can include only those revenues received by TDS Telecom's Subsidiaries by March 31, 2012.<sup>5</sup>

TDS Telecom's Subsidiaries properly and lawfully billed Halo for access services in FY2011, but Halo has refused to pay, first through concocting a regulatory theory that since has been discredited by the Commission and state regulators, and then by seeking

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<sup>3</sup> *Id.* at § 51.917(c)(ii).

<sup>4</sup> Letter from Mike R. Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed May 24, 2012). *See also* Letter from Yaron Dori, Counsel for TDS Telecommunications Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed August 3, 2012)

<sup>5</sup> *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 898 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

bankruptcy protection—protection that has resulted in Halo’s decision to liquidate its assets and cease operation. As a consequence of Halo’s regulatory and legal gamesmanship, TDS Telecom’s Subsidiaries were unable to collect payments owed by Halo by March 31, 2012, and now, in light of Halo’s decision to liquidate, do not ever expect to collect such payment.<sup>6</sup>

Although the FCC’s *USF/ICC Transformation Order* permits an entity in TDS Telecom’s position to seek a waiver of the March 31, 2012, deadline for defining a carrier’s eligible recovery baseline when funds are recovered after that date “as the result of the decision or a court of regulatory agency of competent jurisdiction,”<sup>7</sup> the *USF/ICC Transformation Order* does not address the unique circumstances present here: where a court or regulatory agency of competent jurisdiction expected to order payment is barred from doing so due to the bankruptcy court filing (and related automatic stay)—and subsequent decision to liquidate—of the entity owing such payment. Furthermore, the other mechanisms set forth in the *USF/ICC Transformation Order* that are intended to provide carriers with relief from certain *USF/ICC Transformation Order* requirements (e.g., the Total Cost and Earnings Review<sup>8</sup> or “USF Waiver”<sup>9</sup> approaches) are inapplicable, and, in any event, would be overly burdensome considering the surgical relief sought here. In short, fundamental fairness and the public interest dictate that the

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<sup>6</sup> TDS Telecom is a creditor in Halo’s bankruptcy case but does not expect to recover from the estate any amounts owed.

<sup>7</sup> *Id.* at ¶ 898.

<sup>8</sup> *Id.* at ¶¶ 924-932.

<sup>9</sup> *Id.* at ¶¶ 539-544.

Commission waive its rules in this specific scenario and permit TDS Telecom to include payments owed by Halo in its eligible recovery baseline.<sup>10</sup>

## I. BACKGROUND

TDS Telecom's Subsidiaries are rate-of-return incumbent rural local exchange carriers (ILECs) that provide service, including intrastate exchange access service, in their respective states to telecommunications providers such as Halo. As rural ILECs, TDS Telecom's Subsidiaries generally receive toll traffic through common trunks used to interconnect directly with another carrier's tandem. The other carrier's tandem, in turn, serves as a means for *indirect* interconnection between each of the TDS Telecom Subsidiaries and third-party entity networks, such as Halo, for the transport and termination of toll traffic.<sup>11</sup>

As a common business practice and as a matter of law, compensation for terminating the intrastate toll traffic received from third parties has been and is due pursuant to each TDS Telecom's Subsidiary's lawful state tariff, which requires the third party to pay intrastate access charges for the intrastate non-local traffic that terminates on the TDS Telecom network.<sup>12</sup> Indeed, the type of toll traffic being routed by Halo to TDS

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<sup>10</sup> Importantly, grant of the modest relief sought in this Petition would have no effect on Halo's bankruptcy filing or the jurisdictional boundaries separating the Commission from the presiding bankruptcy court. Rather, it simply would permit TDS Telecom's Subsidiaries to include payments to which it is entitled in its eligible recovery baseline.

<sup>11</sup> As an illustration, Halo is directly interconnected with AT&T, and as a result, indirectly interconnected with TDS Telecom's Subsidiaries. When the calling party dials a phone number belonging to either a TDS Telecom Subsidiary or AT&T subscriber, the call is routed to Transcom, an affiliate of Halo, which then hands the call off to Halo. Halo then delivers the call to AT&T. If the dialed number belongs to a TDS Telecom Subsidiary subscriber, AT&T will then route that call to the TDS Telecom Subsidiary for termination.

<sup>12</sup> Halo also terminates interstate switched access traffic on TDS Telecom's network. TDS Telecom bills Halo at the relevant interstate tariffed rate.



Telecom's Subsidiaries routinely is paid by other carriers, who pay for termination pursuant to TDS Telecom's Subsidiaries exchange access service tariffs.

Unfortunately, Halo has refused to pay TDS Telecom for terminating Halo's intrastate access traffic pursuant to the rates, terms and conditions set forth in the applicable TDS Telecom tariffs. In fact, Halo has refused to pay any amount of the access charges billed for the termination of this traffic. During FY2011, TDS Telecom invoiced Halo a total of [REDACTED] associated with the termination of [REDACTED] *intrastate* minutes-of-use.<sup>13</sup> Halo has claimed and continues to claim<sup>14</sup> that it is not required to pay intrastate access charges because the traffic in question is "intraMTA," for which Halo argues that as a Commercial Mobile Radio Service (CMRS) provider it is not obligated to pay.

Halo's main argument has been that it cannot be required to pay tariffed intrastate access charges because, it claims, it technically did not receive intrastate access service. This is nonsense and a theory already discredited by the Commission. Halo's argument is predicated on the assertion that Halo is a CMRS provider and that the traffic Halo delivered to TDS Telecom's Subsidiaries consisted of intraMTA CMRS calls. According to Halo,<sup>15</sup> its affiliate, Transcom Enhanced Services Inc. (Transcom), aggregates third-party toll traffic from other carriers by advertising a "voice termination service" that

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<sup>13</sup> See Attachment B (FY2011 Revenues Billed to Halo Wireless, Inc.). TDS Telecom also has billed Halo [REDACTED] for the termination of interstate access MOU's in FY2011, which Halo also has failed to pay (although TDS Telecom was able to recover this amount through the NECA pooling mechanism).

<sup>14</sup> After having its theories discredited by the Commission and state regulatory authorities, Halo more recently has begun to claim that it is not liable for payment because it operates as a transiting carrier. This theory is no more plausible than Halo's prior efforts to game the system and should be disregarded.

<sup>15</sup> See Halo Testimony in Docket No. 11-00108, Tennessee Regulatory Authority (TRA); Docket No. 34219, Georgia Public Service Commission; and Docket 9594-TI-100, Public Service Commission of Wisconsin.

Transcom claims to “enhance.” Transcom then hands off the traffic to Halo for termination.<sup>16</sup> Halo, in turn, claims that the traffic is its own CMRS-originated intraMTA calling so as to mask toll calls as local and thereby avoid intrastate access charges. According to Halo, the call, no matter where or on what network it began, is “shape shifted” into a CMRS local call under Halo’s two call theory<sup>17</sup> and, therefore, is not subject to intrastate access charges.

Contrary to Halo’s “exemption from access” claims, Halo has constructively ordered exchange intrastate access service from TDS Telecom’s Subsidiaries and is liable to these subsidiaries for the intrastate access charges on the toll traffic Halo has sent to them.<sup>18</sup> In an attempt to obtain payment, TDS Telecom’s Subsidiaries filed complaints with state utility commissions in Wisconsin, Tennessee, Georgia and Missouri (and has been tracking similar complaint proceedings in other states).<sup>19</sup> In these proceedings, TDS Telecom and its subsidiaries have demonstrated that the traffic delivered by Halo and billed by the TDS Telecom Subsidiaries:

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<sup>16</sup> Despite the fact that Halo has acknowledge that the traffic more than likely originated on the wireline network of another carrier, Halo claims that when it receives traffic from its affiliate Transcom, the traffic originates at Halo’s radio base station.

<sup>17</sup> The Halo/Transcom “two call theory” is summarized as follows: The originated call made by the calling party terminates simply because Transcom touches the call and a second intraMTA CMRS call originates at the Halo tower sites when the call is transported across a 150 foot wireless connection between Transcom and Halo. This two-call theory upon which Halo and Transcom rely to avoid payment of access charges has been rejected by the Commission and a number of state regulators, suggesting that Halo and Transcom are engaged in an access avoidance scheme.

<sup>18</sup> Halo also claims it does not owe access since it never ordered access service from TDS Telecom’s Subsidiaries. However, under the “constructive ordering” doctrine, Halo “constructively orders” service under a tariff, and therefore must pay the tariffed rate if it (1) is interconnected in such a manner that it can expect to receive access services; (2) fails to take reasonable steps to prevent the receipt of services; and (3) does in fact receive such services. *Advantel LLC v. AT&T Corp.*, 118 F. Supp. 2d 680.685 (E.D. Va. 2000) (citing *United Artists Payphone Corp. v. New York Tel. Co.*, 8 FCC Rcd 5563, at § 13 (1993) and *In re Access Charge Reform*, 14 FCC Rcd. 14221, at §188 (1999)). The doctrine applies here.

<sup>19</sup> Docket No. 11-00108, Tennessee Regulatory Authority; Docket No. 34219, Georgia Public Service Commission; Docket 9594-TI-100, Public Service Commission of Wisconsin; Case No. TC-2011-0404, Missouri Public Service Commission.

- Is traditional voice traffic;
- Is originated by traditional LECs and cable companies, both of which are wireline-based services;
- Contains some third-party wireless originated toll calls;
- Is intrastate toll traffic to which intrastate access charges apply; and
- Is properly and accurately billed by TDS Telecom under intrastate tariffs, for which payment has been refused by Halo.

In short, TDS Telecom and its subsidiaries have proven that payment is owed for such traffic.

State regulators have agreed. Specifically, each of the Tennessee Regulatory Authority (TRA), Public Service Commission of Wisconsin (PSCW), and the Georgia Public Service Commission (GPSC) already has ruled that Halo owes intrastate access charges on the intrastate interLATA and intraLATA landline traffic sent to the TDS Telecom Subsidiaries in their respective states.<sup>20</sup> The Michigan Public Service Commission, the Missouri Public Service Commission, and the Public Service Commission of South Carolina have issued similar rulings with respect to other carriers that have provided similar services to Halo.<sup>21</sup> But, unfortunately, these regulatory

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<sup>20</sup> *In Re Complaint Of Concord Telephone Exchange, Inc., et al. Against Halo Wireless, LLC, Transcom Enhanced Services, Inc And Other Affiliates For Failure To Pay Terminating Intrastate Access Charges For Traffic And Other Relief And Authority To Cease Termination*, TRA Docket No. 11-00108, Order dated April 18, 2012 (TRA Order). *Complaint of TDS Telecom against Halo Wireless, Inc. Transcom Enhanced Services, Inc., and other Affiliates for failure to pay Terminating Intrastate Access Charges for traffic and for Expedited Declaratory Relief and Authority to Cease Termination of Traffic*, Georgia PSC Docket No. 34219, Commission Ruling on July 12, 2012. *Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Service, Inc.*, PSC of Wisconsin Docket No. 9594-TI-100, Commission ruling on July 12, 2012. These state commission rulings basically found that Halo is liable for payment of intrastate access but deferred to the Bankruptcy Court to determine and enforce payment.

<sup>21</sup> See, e.g., *In Re: Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Sought Carolina v. Halo Wireless, Incorporated for Breach of the Parties' Interconnection Agreement*,

agencies are not able to order and enforce payment because on August 8, 2011, Halo filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (“Bankruptcy Court”).<sup>22</sup> As a result of this filing and the Bankruptcy Court’s automatic stay order, these regulatory agencies cannot legally order “the amount of any claim against Halo or to affect the debtor-credit relationship”<sup>23</sup> To make matters worse, Halo recently converted its Chapter 11 (reorganization) case to a Chapter 7 (liquidation) case. TDS Telecom’s Subsidiaries are virtually assured that they never will receive the payment they are owed, as Halo’s creditors reportedly are many and its assets are few.

Although some regulatory agencies have permitted TDS Telecom’s Subsidiaries to stop accepting and terminating traffic that they receive from Halo, not all state regulatory commissions have ruled on this matter. Thus, even though TDS Telecom no longer is accepting traffic from Halo in several states, it must continue to terminate traffic for Halo in other jurisdictions or risk noncompliance with its own common carrier regulatory obligations. On average, [REDACTED] of all intrastate access traffic the TDS Telecom’s Subsidiaries receive per month is from Halo.<sup>24</sup> Moreover, [REDACTED] of TDS Telecom’s Subsidiaries have more than [REDACTED] of their intrastate terminating traffic coming

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PSC South Carolina Docket No. 2011-304-C. *In the matter of the complain of Michigan Bell Telephone Company d/b/a AT&T Michigan against Halo Wireless, Inc., to authorize AT&T Michigan to discontinue service to Halo Wireless, Inc., and for other relief*, Michigan PSC Case No. U-17018.

<sup>22</sup> *In re: Halo wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, pg. 1-2 (October 26, 2011).

<sup>23</sup> *TRA Order* at 21.

<sup>24</sup> *See* Attachment C (Intrastate Switched Access Minutes-Of-Use Terminated for Halo Wireless, Inc. (February 2012)).

from Halo.<sup>25</sup> Unfortunately, even in bankruptcy, and notwithstanding the conclusions of state regulators, Halo still claims that it is not subject to access tariffs<sup>26</sup> and has continued to fail to compensate TDS Telecom's Subsidiaries to the amount of about [REDACTED] per month ([REDACTED] for intrastate and [REDACTED] for interstate traffic).

## II. THE FCC HAS EXPRESSLY REJECTED HALO'S CLAIMED EXEMPTION FROM PAYING ACCESS CHARGES

In its *USF/ICC Transformation Order*, the FCC expressly rejected Halo/Transcom's two-call theory and, as a consequence, Halo's purported exemption from paying intrastate access charges. The discussion in the *USF/ICC Transformation Order* specifically addressing Halo is worth quoting in full:

979. First, one wireless service provider [Halo] claims that calls that it receives from other carriers, routes through its own base stations, and passes on to third-party carriers for termination have "originated" at its own base stations for purposes of applying the intraMTA rule. As explained below, we disagree.

\* \* \*

1005. We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA." It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle," this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by

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<sup>25</sup> *Id.*

<sup>26</sup> See Attachment D (Halo Letters).

characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that “it is unclear whether the intraMTA rules would even apply in that case.”

1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the “reorigination” of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo’s contrary position.<sup>27</sup>

Clearly, the FCC rejected Halo’s claim that calls that begin with a traditional end-user customer dialing a call on a landline network can be transformed into a CMRS-originated call simply because the call passes through an alleged ESP (*i.e.*, Transcom) and somehow “reoriginates” on a wireless network. Moreover, as explained in the *USF/ICC Transformation Order*, this finding was not new or particularly novel and thus should have been abundantly clear to Halo. Accordingly, even when the Commission acknowledged Halo’s description of how its traffic flows through the network, it found that Halo’s toll calls were not transformed and are subject to lawful access charges. As a consequence of the Commission’s and other regulatory agencies rulings, Halo owes TDS Telecom [REDACTED] for the amount billed for intrastate usage in FY2011.

### III. GOOD CAUSE EXISTS TO GRANT THIS WAIVER

The Commission’s rules may be waived “for good cause shown.”<sup>28</sup> Good cause, in turn, may be found and a waiver granted “where particular facts would make strict

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<sup>27</sup> *USF/ICC Transformation Order* at ¶¶ 979, 1005 and 1006.

<sup>28</sup> 47 C.F.R. §1.3.

compliance inconsistent with the public interest.”<sup>29</sup> To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.<sup>30</sup> As discussed herein, good cause exists and the public interest would be served by allowing TDS Telecom to include in its eligible recovery baseline the revenues that it billed Halo for intrastate usage during FY2011 for each of TDS Telecom’s Subsidiaries.

The sole purpose of this Petition is to ensure that the fundamental intent of the *USF/ICC Transformation Order*—and, more specifically, the requirement that the Base Period Revenue for eligible recovery include revenues billed for terminating intrastate switched access service or reciprocal compensation provided in FY2011 and received by March 31, 2012—is not unduly undermined.<sup>31</sup> The Commission recognized that there may be billing disputes that may not be resolved by March 31, 2012, and thus it set forth a waiver process for dealing with such circumstances—

Carriers may, however, request a waiver of our rules defining the Baseline to account for revenues billed for terminating switched access service or reciprocal compensation provided in FY2011 but *recovered after the March 31, 2012 cut-off as the result of the decision of a court or regulatory agency of competent jurisdiction*. The adjusted Baseline will not include settlements regarding charges after the March 31, 2012 cut-off, and any carrier requesting such modification to its Baseline shall, in addition to otherwise satisfying the waiver criteria, have the burden of demonstrating that the revenues are not already included in its Baseline, including providing a certification to the Commission to that effect. Any request for such a waiver also should include *a copy of the decision*

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<sup>29</sup> *Northeast Cellular* at 1166; *see also* *ICO Global Communications* at 269 (quoting *Northeast Cellular*); *WAIT Radio* at 1157-59.

<sup>30</sup> *See, e.g.,* *WAIT Radio* at 1157 (stating that even though the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule); *Northeast Cellular* at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

<sup>31</sup> *USF/ICC Transformation Order* at ¶ 898 and 47 C.F.R. § 54.917(c)(ii).

*requiring payment of the disputed intercarrier compensation.* Any such waiver would be subject to the Commission's traditional "good cause" waiver standard, rather than the Total Cost and Earnings Review specified below. See 47 C.F.R. § 1.3.<sup>32</sup>

However, the Commission could not have foreseen all of the circumstances present here, where a "decision of a court or regulatory agency of competent jurisdiction" has been issued but cannot be used to recover payment due to the bankruptcy filing of the entity owing the payment. Indeed, the many facts and circumstances present here were beyond prediction. The Commission, for example, could not have predicted every permutation through which a carrier such as Halo would develop an elaborate scheme to avoid paying access charges in a way that would have such potential long-term revenue ramifications for TDS Telecom's Subsidiaries due to the nature of the eligible recovery mechanism. The Commission also could not have predicted that a carrier such as Halo would continue to fail to pay for intrastate access even after the Commission specifically addressed (and rejected) its claims in the very same order that set up the process for the eligible recovery mechanism. It also could not have foreseen that a carrier such as Halo would seek bankruptcy protection when things did not go its way, ultimately electing to liquidate its assets and avoid making any payments. Indeed, even if TDS Telecom's Subsidiaries were to get every relevant regulatory authority to rule, as some already have, that the service provided to Halo is access service, Halo's bankruptcy filing means that these regulatory authorities could not order Halo to make payment and that, even if they could, Halo would not have the means to pay.<sup>33</sup>

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<sup>32</sup> *USF/ICC Transformation Order* at footnote 1745 (emphasis added).

<sup>33</sup> See, e.g., *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy, E. D. Tex., *Emergency Motion for Section 105 Status Conference in Order to Establish Procedures for Conversion to Chapter 7* at ¶ 10 (filed July 13, 2012) (conceding that if Halo is required to pay access charges, then "it would be pointless to



Regulatory authority rulings that implicate Halo are permitted, but they are restricted by order of the Bankruptcy Court. In an Order issued on October 26, 2011, the Bankruptcy Court ruled that—

“any regulatory proceedings . . . may be advanced to a conclusion and a decision in respect of such matters may be rendered; provided however, that nothing herein shall permit, as part of such proceeding:

- A. Liquidation of the amount of any claim against the Debtor; or
- B. Any action which affects the debtor-creditor relationship between Debtor and any creditor or potential creditor.”<sup>34</sup>

In short, although a regulatory authority can find that the service Halo takes is subject to access charges, it can neither stipulate nor mandate payment of an amount to be collected from Halo.

All of this puts TDS Telecom’s Subsidiaries in an impossible position. The *USF/ICC Transformation Order* and the Commission’s rules require a carrier’s eligible recovery baseline to be based on payments received in FY2011, with a cut-off receipt date of March 31, 2012. Payments received after March 31, 2012, can count toward the baseline only if recovered “as the result of the decision of a court or regulatory agency of competent jurisdiction.” But here, Halo has refused to make payments to the TDS Telecom Subsidiaries, and the mechanism designed to protect them—the rulings of a court or regulatory agency of competent jurisdiction—is unavailing because Halo has sought bankruptcy protection. In other words, the mechanism the Commission designed

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litigate whether the ‘correct’ amount is one-half or three-quarters of what the claimants assert is due, since Halo has no means to fund a plan that would address even these amounts”).

<sup>34</sup> *In re: Halo Wireless, Inc.* Case No. 11-42464, Bkrtcy, E. D.. Tex., *Order Granting Motion of TDS to Determine Automatic Stay Is Not Applicable, or Alternatively, to Lift the Automatic Stay Without Waiver of 30-Day Hearing Requirement*, at 2 (October 26, 2011).

to protect carriers such as TDS Telecom's Subsidiaries in this situation is impeded from working effectively absent grant of the limited waiver TDS Telecom is seeking.

The FCC clearly intended to allow carriers to account for revenues not collected before March 31, 2012, "as the result of the decision of a court of regulatory agency of competent jurisdiction."<sup>35</sup> As the facts stated herein make clear, there is every reason to believe that TDS Telecom would have secured the necessary state utility commission decisions to meet this requirement but for the automatic stay imposed by Halo's bankruptcy filing.<sup>36</sup> Granting this limited waiver under the unique circumstances that TDS Telecom's Subsidiaries have encountered with Halo would therefore be consistent with—and not in any way undermine—the intent of the *USF/ICC Transformation Order* and the Commission's rules.<sup>37</sup>

Furthermore, to the extent there are other mechanisms in the *USF/ICC Transformation Order* that are designed to provide carriers with relief from certain *USF/ICC Transformation Order* requirements, they are inapplicable here. A Total Cost and Earnings Review, for example, is not an appropriate mechanism because it was designed to address situations in which a carrier believes that the terms of the *USF/ICC*

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<sup>35</sup> *USF/ICC Transformation Order* at footnote 1745.

<sup>36</sup> Notably, 11 of the 14 states in which a TDS Telecom Subsidiary has billed Halo has initiated or resolved a proceeding to address whether Halo owes intrastate access charges. *See* Attachment E (Proceedings Against Halo in States in Which a TDS Telecom Subsidiary Has Billed Halo).

<sup>37</sup> In this regard, TDS Telecom can also here certify that the amounts owed by Halo that are the subject of this Petition for Waiver were not already included in its Eligible Recovery Baseline filing of June 18, 2012. *See* Attachment F (Certification of TDS Telecom). Separately but relatedly, it is important to note that TDS Telecom is not asking the Commission to take any action that involves the Bankruptcy Code or would have implications for Halo's bankruptcy. TDS Telecom is not asking the Commission to force Halo to pay what it owes or to take actions that could implicate the Bankruptcy Court's automatic stay or disrupt liquidation proceedings. The limited waiver that TDS Telecom is seeking is specific solely to the unique circumstances of TDS Telecom's inability to receive payment from Halo for traffic exchanged in FY2011 despite repeated, diligent and justified efforts to collect.

*Transformation Order* violate the Takings Clause of the Fifth Amendment to the U.S. Constitution.<sup>38</sup> No such claim is being made here. TDS Telecom is claiming only that it cannot avail itself of the mechanism set forth in footnote 1745 of the *USF/ICC Transformation Order* to facilitate the inclusion of FY2011 revenues in its eligible recovery baseline. The “USF Waiver” approach described in the *USF/ICC Transformation Order* also is not appropriate under these circumstances.<sup>39</sup> That approach was intended to address situations in which the absence of relief would “put consumers at risk of losing voice services, with no alternative terrestrial providers.”<sup>40</sup> Both the Total Cost and Earnings Review and “USF Waiver” processes are designed to exclude a carrier from the requirements (or portions thereof) of the *USF/ICC Transformation Order*. Presumably, it is for this reason that the thresholds for satisfying these processes are high. By comparison, TDS Telecom is seeking this waiver so it can fall *within* the requirements of the *USF/ICC Transformation Order*. Indeed, requiring TDS Telecom to meet the requirements of either the Total Cost and Earnings Review and “USF Waiver” processes would be unduly and excessively burdensome given the limited and surgical relief being sought.

Grant of this Petition is warranted because, absent relief, the public interest would not be served. If the Commission does not grant this Petition, the amount that each TDS Telecom Subsidiary will be able to recover, on a dollar-for dollar basis, will be reduced despite the lawful provision of intrastate access services and the expenditure of every reasonable and appropriate effort to collect revenues owed by Halo. Declining this

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<sup>38</sup> *Id.* at ¶ 924.

<sup>39</sup> *Id.* at ¶ 540.

<sup>40</sup> *Id.*

request for relief would mean a reduction in the amount of eligible recovery for each TDS Telecom Subsidiary for a combined amount of [REDACTED] in the first year, compounded by an annual loss each year of [REDACTED] less than the previous year pursuant to the automated operation of the Eligible Recovery mechanism. Assuming that the Commission's Recovery Mechanism is in effect over the next 20 years, the combined amount that TDS Telecom's Subsidiaries would not be able to recover would be well over [REDACTED]—an amount that is material to TDS Telecom's ability to deploy broadband and thus of enormous consequence to the company and its customers, whose service would suffer. Indeed, not recovering this amount will limit TDS Telecom's ability to deploy additional network and improve its existing network so that more of its customers can receive broadband service and existing broadband customers can benefit from greater broadband speeds. A loss of this amount due solely to the regulatory gamesmanship of Halo is avoidable and not something that TDS Telecom and its customers should have to bear.

Within the *USF/ICC Transformation Order*, the Commission set forth the public interest obligation for rural ILECs to use support to achieve universal availability of both voice and broadband service.<sup>41</sup> TDS Telecom's Subsidiaries historically have been committed to providing such service to these high-cost areas at just and reasonable rates. In order for them to continue to meet these obligations, TDS Telecom's Subsidiaries will need to receive sufficient and predictable funding through the Connect America Fund to continue to make rational investments and for them to cover the cost of ongoing operations.

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<sup>41</sup> See *USF/ICC Transformation Order* at ¶ 205.

TDS Telecom already has incurred the expense of providing service to Halo. If these revenues are not included in the baseline, the negative impact of Halo's failure to compensate TDS Telecom Subsidiaries will be perpetuated going forward on an exponential basis. In this time of economic uncertainty, a prudent business decision to compensate for these lost revenues would entail cutting back on capital investment and/or having to raise customers' rates in order to meet the Commission public interest goal of "achieving universal availability of voice and broadband." Clearly, neither TDS Telecom's Subsidiaries nor their customers should have to bear the consequence of Halo's actions.

#### IV. CONCLUSION

In this Petition, TDS Telecom seeks a limited waiver of the Commission's rules so it can include in its eligible recovery baseline calculation the intrastate revenues that it billed Halo for usage during FY2011 for each of the TDS Telecom Subsidiaries. As demonstrated herein, the Section 1.3 "good cause" standard required for grant of this Petition has been met, and grant of this Petition is consistent with the public interest. The limited waiver sought herein would be applicable only to the unique circumstances regarding the intrastate access revenue that TDS Telecom has billed Halo. Accordingly, for the reasons described above, the Commission should grant this Petition forthwith.

Respectively Submitted,

A handwritten signature in dark ink, appearing to read "Yaron Dori", is written over a horizontal line.

Kevin Hess  
Senior Vice President - Government  
and Regulatory Affairs  
TDS Telecommunications Corp.  
525 Junction Road, Suite 7000  
Madison, Wisconsin 53717  
Tel. (608) 664-4160  
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Yaron Dori  
Covington & Burling LLP  
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E-mail. ydori@cov.com

Its Attorneys

August 10, 2012

**ATTACHMENT A**

**TDS Telecom Subsidiaries  
That Have Billed Halo for Traffic**

B. B. & W. TELEPHONE COMPANY – WI	STOCKBRIDGE & SHERWOOD TELEPHONE - WI
BADGER TELECOM, INC. - WI	TELLICO TELEPHONE COMPANY - TN
BARNARDSVILLE TELEPHONE COMPANY - NC	TENNESSEE TELEPHONE COMPANY - TN
BLACK EARTH TELEPHONE COMPANY - WI	TENNEY TELEPHONE COMPANY - WI
BLUE RIDGE TELEPHONE COMPANY - GA	TIPTON TELEPHONE COMPANY - IN
BONDUEL TELEPHONE COMPANY - WI	TRI-COUNTY TELEPHONE COMPANY - IN
BUTLER TELEPHONE COMPANY - AL	UTELCO, INC. - WI
CALHOUN CITY TELEPHONE COMPANY - MS	WAUNAKEE TELEPHONE COMPANY - WI
CAMDEN TELEPHONE & TELEGRAPH CO - GA	WEST POINT TELEPHONE COMPANY - IN
CENTRAL STATE TELEPHONE COMPANY - WI	WILLISTON TELEPHONE COMPANY - SC
CHATHAM TELEPHONE COMPANY - MI	WOLVERINE TELEPHONE COMPANY - MI
COMMUNICATIONS CORP OF INDIANA - IN	WYANDOTTE TELEPHONE COMPANY - OK
COMMUNICATIONS CORP OF MICHIGAN - MI	
CONCORD TELEPHONE EXCHANGE INC. - TN	
DECATUR TELEPHONE COMPANY - AR	
EASTCOAST TELECOM, INC. - WI	
HOME TELCO OF PITTSBORO - IN	
HOME TELEPHONE CO-WALDRON - IN	
HUMPHREYS COUNTY TELEPHONE CO - TN	
ISLAND TELEPHONE COMPANY - MI	
LESLIE COUNTY TELEPHONE COMPANY - KY	
LEWISPORT TELEPHONE COMPANY - KY	
MCCLELLANVILLE TELEPHONE COMPANY - SC	
MERCHANTS & FARMERS TELEPHONE CO - IN	
MID-AMERICA TELEPHONE COMPANY - OK	
MID-PLAINS TELEPHONE COMPANY - WI	
MIDWAY TELEPHONE COMPANY - WI	
MOSINEE TELEPHONE COMPANY - WI	
MT. VERNON TELEPHONE COMPANY - WI	
MYRTLE TELEPHONE COMPANY - MS	
NELSON-BALL GROUND TELEPHONE CO - GA	
NORWAY TELEPHONE COMPANY - SC	
OAKMAN TELEPHONE COMPANY - AL	
OKLAHOMA COMMUNICATION SYSTEMS - OK	
PEOPLES TELEPHONE COMPANY - AL	
QUINCY TELEPHONE COMPANY - FL	
QUINCY TELEPHONE COMPANY - GA	
RIVERSIDE TELECOM, INC. - WI	
SALEM TELEPHONE COMPANY - KY	
SALUDA MOUNTAIN TELEPHONE CO - NC	
SCANDINAVIA TELEPHONE COMPANY - WI	
SERVICE TELEPHONE COMPANY - NC	
SHIAWASSEE TELEPHONE COMPANY - MI	
SOUTHEAST TELEPHONE COMPANY - WI	
ST STEPHEN TELEPHONE COMPANY - SC	
STATE LONG DISTANCE TELEPHONE CO - WI	

**ATTACHMENT B****FY2011 Revenues Billed to Halo Wireless, Inc.**

<b>Company (State)</b>	<b>Revenues</b>	<b>MOUs</b>
B. B. & W. TELEPHONE COMPANY - WI		
BADGER TELECOM, INC. - WI		
BARNARDSVILLE TELEPHONE COMPANY - NC		
BLACK EARTH TELEPHONE COMPANY - WI		
BLUE RIDGE TELEPHONE COMPANY - GA		
BONDUEL TELEPHONE COMPANY - WI		
BUTLER TELEPHONE COMPANY - AL		
CALHOUN CITY TELEPHONE COMPANY - MS		
CAMDEN TELEPHONE & TELEGRAPH CO - GA		
CENTRAL STATE TELEPHONE COMPANY - WI		
CHATHAM TELEPHONE COMPANY - MI		
COMMUNICATIONS CORP OF INDIANA - IN		
COMMUNICATIONS CORP OF MICHIGAN - MI		
CONCORD TELEPHONE EXCHANGE INC. - TN		
DECATUR TELEPHONE COMPANY - AR		
EASTCOAST TELECOM, INC. - WI		
HOME TELCO OF PITTSBORO - IN		
HOME TELEPHONE CO-WALDRON - IN		
HUMPHREYS COUNTY TELEPHONE CO - TN		
ISLAND TELEPHONE COMPANY - MI		
LESLIE COUNTY TELEPHONE COMPANY - KY		
LEWISPORT TELEPHONE COMPANY - KY		
MCCLELLANVILLE TELEPHONE COMPANY - SC		
MERCHANTS & FARMERS TELEPHONE CO - IN		
MID-AMERICA TELEPHONE COMPANY - OK		
MID-PLAINS TELEPHONE COMPANY - WI		
MIDWAY TELEPHONE COMPANY - WI		
MOSINEE TELEPHONE COMPANY - WI		
MT. VERNON TELEPHONE COMPANY - WI		
MYRTLE TELEPHONE COMPANY - MS		
NELSON-BALL GROUND TELEPHONE CO - GA		
NORWAY TELEPHONE COMPANY - SC		
OAKMAN TELEPHONE COMPANY - AL		
OKLAHOMA COMMUNICATION SYSTEMS - OK		
PEOPLES TELEPHONE COMPANY - AL		
QUINCY TELEPHONE COMPANY - FL		
QUINCY TELEPHONE COMPANY - GA		
RIVERSIDE TELECOM, INC. - WI		
SALEM TELEPHONE COMPANY - KY		
SALUDA MOUNTAIN TELEPHONE CO - NC		
SCANDINAVIA TELEPHONE COMPANY - WI		
SERVICE TELEPHONE COMPANY - NC		
SHIAWASSEE TELEPHONE COMPANY - MI		
SOUTHEAST TELEPHONE COMPANY - WI		
ST STEPHEN TELEPHONE COMPANY - SC		
STATE LONG DISTANCE TELEPHONE CO - WI		



Company (State)	Revenues	MOUs
STOCKBRIDGE & SHERWOOD TELEPHONE - WI		
TELLICO TELEPHONE COMPANY - TN		
TENNESSEE TELEPHONE COMPANY - TN		
TENNEY TELEPHONE COMPANY - WI		
TIPTON TELEPHONE COMPANY - IN		
TRI-COUNTY TELEPHONE COMPANY - IN		
UTELCO, INC. - WI		
WAUNAKEE TELEPHONE COMPANY - WI		
WEST POINT TELEPHONE COMPANY - IN		
WILLISTON TELEPHONE COMPANY - SC		
WOLVERINE TELEPHONE COMPANY - MI		
WYANDOTTE TELEPHONE COMPANY - OK		
<b>TOTAL</b>		

**ATTACHMENT C****Intrastate Switched Access Minutes-Of-Use Terminated for Halo Wireless, Inc.  
(February 2012)**

Company Name (State)	Intrastate Access MOU Terminated in February 2012		
	HALO Traffic	Total Traffic	HALO % of Total Traffic
BADGER TELECOM, INC. - WI			
BARNARDSVILLE TELEPHONE COMPANY - NC			
BLACK EARTH TELEPHONE COMPANY - WI			
BLUE RIDGE TELEPHONE COMPANY - GA			
BONDUEL TELEPHONE COMPANY - WI			
BUTLER TELEPHONE COMPANY - AL			
CALHOUN CITY TELEPHONE COMPANY - MS			
CAMDEN TELEPHONE & TELEGRAPH CO - GA			
COMMUNICATIONS CORP OF INDIANA - IN			
COMMUNICATIONS CORP OF MICHIGAN - MI			
CENTRAL STATE TELEPHONE COMPANY - WI			
CHATHAM TELEPHONE COMPANY - MI			
CONCORD TELEPHONE EXCHANGE INC. - TN			
DECATUR TELEPHONE COMPANY - AR			
EASTCOAST TELECOM, INC. - WI			
HOME TELCO OF PITTSBORO - IN			
HOME TELEPHONE CO-WALDRON - IN			
HUMPHREYS COUNTY TELEPHONE CO - TN			
ISLAND TELEPHONE COMPANY - MI			
LESLIE COUNTY TELEPHONE COMPANY - KY			
LEWISPORT TELEPHONE COMPANY - KY			
MCCLELLANVILLE TELEPHONE COMPANY - SC			
MID-AMERICA TELEPHONE COMPANY - OK			
MID-PLAINS TELEPHONE COMPANY - WI			
MIDWAY TELEPHONE COMPANY - WI			
MOSINEE TELEPHONE COMPANY - WI			
MT. VERNON TELEPHONE COMPANY - WI			
MYRTLE TELEPHONE COMPANY - MS			
NELSON-BALL GROUND TELEPHONE CO - GA			
NORWAY TELEPHONE COMPANY - SC			
OAKMAN TELEPHONE COMPANY - AL			
OKLAHOMA COMMUNICATION SYSTEMS - OK			
PEOPLES TELEPHONE COMPANY - AL			
QUINCY TELEPHONE COMPANY - FL & GA			

Intrastate Access MOU Terminated in February 2012			
Company Name (State)	HALO Traffic	Total Traffic	HALO % of Total Traffic
RIVERSIDE TELECOM, INC. - WI			
SALEM TELEPHONE COMPANY - KY			
SALUDA MOUNTAIN TELEPHONE CO - NC			
SCANDINAVIA TELEPHONE COMPANY - WI			
SERVICE TELEPHONE COMPANY - NC			
SHIAWASSEE TELEPHONE COMPANY - MI			
SOUTHEAST TELEPHONE COMPANY - WI			
ST STEPHEN TELEPHONE COMPANY - SC			
STATE LONG DISTANCE TELEPHONE CO - WI			
TELLICO TELEPHONE COMPANY - TN			
TENNESSEE TELEPHONE COMPANY - TN			
TENNEY TELEPHONE COMPANY - WI			
TIPTON TELEPHONE COMPANY - IN			
TRI-COUNTY TELEPHONE COMPANY - IN			
UTELCO, INC. - WI			
WAUNAKEE TELEPHONE COMPANY - WI			
WEST POINT TELEPHONE COMPANY - IN			
WILLISTON TELEPHONE COMPANY - SC			
WOLVERINE TELEPHONE COMPANY - MI			
WYANDOTTE TELEPHONE COMPANY - OK			
<b>TOTAL</b>			

**ATTACHMENT D**

**Halo Letters**



2351 W. Northwest Hwy, Suite 1204, Dallas, TX 75220

April 11, 2012

Central State Telephone Company  
Access Service Center  
NW 8702  
P.O. Box 1450  
Minneapolis, MN 55485-8702

RE: Notice of Percent VoIP Usage Factor for Halo Wireless, Inc (Halo).

Dear Sir/Madam:

Halo maintains that its traffic delivered to your company is not subject to your access tariffs. Furthermore, we contend that Halo is not a "Customer" of your tariffed services. Notwithstanding these positions, we acknowledge the possibility that some might claim that Halo's traffic is not "Non-Access Telecommunications Traffic" as defined in the FCC's rules and is "Access Reciprocal Compensation." Accordingly, without waiver of our contentions, or acceptance that Halo is your "access customer," this letter is sent as notice that Halo's PVU is **100%**. Specifically, 100% of Halo's traffic originates from and/or terminates to an end user customer of a service that requires Internet Protocol-compatible customer premises equipment.

Thank you for your attention in this matter.

Halo Wireless, Inc.  
Accounts Payable



2351 W. Northwest Highway, Suite 1204, Dallas, Texas 75220

December 13, 2011

Waunakee Telephone Company  
Access Service Center  
PO Box 1450  
Minneapolis, MN 55485-8702

RE: Invoice Number 0074429F-D-11314

Dear Sir/Madam:

This will acknowledge receipt of your assigned invoice number 0074429F-D-11314 with a billing date of November 10, 2011. The charges in your invoice reflect assertions of amounts due for traffic terminated by your company both prior to and after August 8, 2011.

As we have advised Waunakee previously, Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. See 47 C.F.R. § 20.11(d) and (e). We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either.

In the event that there was an obligation to pay such charges, please also be advised that a petition for relief under Chapter 11 was filed on August 8, 2011 in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division commencing Case No. 11-42464 before the Honorable Brenda T. Rhoades.

The bankruptcy filing activates section 362 of the Bankruptcy Code, which operates as a stay of any collection action against the Debtor or any attempt by a creditor to obtain possession of or control over property of the bankruptcy estate. A copy of the Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors and Deadlines is attached for your convenience. Please note that the meeting of creditors, required under section 341 of the Bankruptcy Code, and rescheduled to 2:30 p.m. on September 19, 2011, was held. Also please note that your deadline for filing a proof of claim with regard to any assertion regarding any traffic which occurred on prior to August 8, 2011, is December 19, 2011.

Having received notice of the bankruptcy filing and being now aware of the applicable jurisprudence, any additional attempt to collect a debt or obligation incurred by the Debtor prior to August 8, 2011, will be deemed a direct violation of section 362 of the Bankruptcy Code, and will cause the Debtor to seek judicial relief, and if necessary, monetary damages against you for your willful violations of federal law.

Since your invoice seeks payment for sums asserted due for traffic which is after Halo's filing of its Chapter 11 case, there has been no valid request for interconnection, and all traffic is "non-access" for purposes of 47 C.F.R. § 20.11(d), it is Halo's position that your invoices are invalid and the current regime maintains a "no compensation." See *Declaratory Ruling and Report and Order, In the Matter of Developing a Unified Inter-carrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855, n. 57 (2005) ("T-Mobile Order"). Until you seek to properly request interconnection as detailed in our February 3, 2011 letter plus email response of February 4, 2011, both in reply to Jeni White, TDS Carrier Relations there is no obligation on Halo's part, irrespective of when the charges asserted were alleged to have incurred.

Notwithstanding the foregoing, Halo still recognizes that as a Debtor in Possession, it must abide by otherwise applicable non-bankruptcy law with regard to its activities post petition. In light of that requirement, even though "no compensation" is due for any amounts (pre- or post-petition), ILECs may still invoke the rights and remedies granted by the FCC in 47 C.F.R. § 20.11 on a prospective basis, without being impeded by the automatic stay. While you can secure the right to payment going forward, any attempts to collect on the invoices referenced above must be done by means of filing an administrative expense claim. In order to facilitate this process, should you decide to pursue your 47 C.F.R. §

December 13, 2011

RE: Invoice Number 0074429F-D-11314

Page -2-

20.11 rights, Halo will not require that you to waive any assertions you may have regarding the validity of the access charge based invoice that you have submitted to Halo.

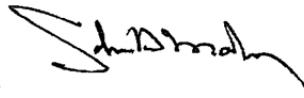
As we previously advised Ms. White, In order to take advantage of the option provided by rule 20.11(e) the ILEC must do two things before any obligations attach to the CMRS provider. First, the ILEC must "request interconnection." Second, the ILEC must expressly invoke "the negotiation and arbitration procedures contained in section 252 of the Act." These two steps are taken directly from rule 20.11(e) and compliance is very easy to achieve. Halo has not received any reply to our last contact of February 4, 2011..

If and when your company properly performs the two mandatory steps in a new request letter to us, Halo will recognize them as a sufficient post petition "request for interconnection, services, or network elements pursuant to section 251" and we will enter § 252 negotiations as required by rule 20.11(e). Further, if you request interim compensation Halo will honor the interim compensation obligations set out in 20.11(e) on a prospective basis from and after receipt of the 20.11(e) request for interconnection. Should you tender such a letter, please advise us as to the interim rates you assert apply (rate elements and associated charges) so that we may avoid further delay in processing any invoices due to uncertainty regarding applicable rates and charges.

For the record, however, please be advised that Halo will not agree to "negotiate and enter into a binding agreement ... without regard to the standards set forth in subsections (b) and (c) of section 251." Any negotiated terms will be consistent with the standards set forth in subsections (b) and (c) of section 251 (and the corresponding FCC implementing rules for those subsections). Further, Halo will not agree to negotiate terms that do not pertain directly to, or involve any issue outside of § 251(b) and/or (c).<sup>1</sup> As a consequence, Halo will not negotiate over the scope of Halo's rights under its federal licenses, or the issue of whether any traffic is subject to "exchange access" charges" or an ILEC state or federal switched access tariff. Any inquiry or attempt to discover whether some or all traffic is (or is not) "CMRS" or is (or is not) "authorized" will be outside of the scope of these negotiations. That question is subject to the FCC's exclusive jurisdiction and is not a proper subject for § 252 negotiations.

If you, or your counsel, wish to discuss this matter further, you may contact me at your convenience.

Sincerely,



John Marks  
General Counsel  
jmarks@halowireless.com

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<sup>1</sup> Halo will negotiate subsection (a) interconnection terms as well, given the FCC's decision in MO&O, *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket 06-55, DA 07-709, 22 FCC Rcd 3513 (rel. Mar. 2007). Subsection (a) interconnection – like § 251(c)(2) interconnection – relates only to "the linking of two networks for the mutual exchange of traffic" and "does not include the transport and termination of traffic." See 47 C.F.R. § 51.5 (definition of "interconnection").



**ATTACHMENT E****Proceedings Against Halo in States in Which  
a TDS Telecom Subsidiary Has Billed Halo for Traffic**

<b>State</b>	<b>Docket Number</b>	<b>Docket Title</b>
Alabama	31682	In the Matter of: BellSouth Telecommunications, LLC, d/b/a AT&T Alabama v. Halo Wireless, Inc.
Florida	110234	Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Florida against Halo Wireless, Inc.
Georgia	34219	Complaint of TDS Telecom against Halo Wireless, Inc. Transcom Enhanced Services, Inc., and other Affiliates for failure to pay Terminating Intrastate Access Charges for traffic and for Expedited Declaratory Relief and Authority to Cease Termination of Traffic
Kentucky	2011-00199	Ballard Rural Telephone Cooperative Corporation, Inc. et al v. BellSouth Telecommunications, Inc. d/b/a/ AT&T Kentucky and BellSouth Telecommunications, Inc. d/b/a/ AT&T Kentucky v. Halo Wireless, Inc.
Michigan	U-17018	In the matter of the complain of Michigan Bell Telephone Company d/b/a AT&T Michigan against Halo Wireless, Inc., to authorize AT&T Michigan to discontinue service to Halo Wireless, Inc., and for other relief
Mississippi	2011-AD-223	In Re: Formal Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a/ AT&T Mississippi Against Halo Wireless, Inc.
Missouri	TC-2011-0404	BPS Telephone Company, Citizens Telephone Company of Higginsville, Mo., Craw-Kan Telephone, Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity Communications Services I, Inc., Fidelity Communications Services II, Inc., Fidelity Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Green Hills Telecommunications Services, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, K.L.M. Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, Mark Twain Communications Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Northeast Missouri Rural Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company, (Complainants) v. Halo Wireless, Inc., (Respondent)
North Carolina	P-55 Sub 1841	BellSouth Telecommunications, Inc. d/b/a/ AT&T North Carolina v. Halo Wireless, Inc.
South Carolina	2011-304-C	In Re: Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T South Carolina v. Halo Wireless, Incorporated for Breach of the Parties' Interconnection Agreement
Tennessee	11-00108	In Re Complaint Of Concord Telephone Exchange, Inc., et al. Against Halo Wireless, LLC, Transcom Enhanced Services, Inc And Other Affiliates For Failure To Pay Terminating Intrastate Access Charges For Traffic And Other Relief And Authority To Cease Termination
Wisconsin	9495-TT-100	Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Service, Inc.

\* State proceedings against Halo have been initiated or resolved in all but three states in which a TDS Telecom Subsidiary has billed Halo for traffic: Arkansas, Indiana and Oklahoma.

**ATTACHMENT F**

**Certification of TDS Telecom**

I, Kevin Hess, Senior Vice President - Government and Regulatory Affairs of TDS Telecommunications Corp., hereby certify that none of the amounts owed by Halo Wireless, Inc., that are the subject of the this Petition for Limited Waiver were included in the Eligible Recovery Baseline filing filed by TDS Telecommunications Corp. and its operating subsidiaries with the Federal Communications Commission on June 18, 2012.



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